

JOHN ROSS, JR.
v.
ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-113-A

Decided March 18, 1992

Appeal from a decision declining to take land in trust for the benefit of an individual Indian.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Lands: Trust Acquisitions

The approval of requests to acquire land in trust status for an Indian tribe or individual is committed to the discretion of the Bureau of Indian Affairs. It is not the function of the Board of Indian Appeals, in reviewing such decisions, to substitute its judgment for that of the Bureau. Rather, it is the Board's responsibility to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion.

2. Administrative Procedure: Burden of Proof--Bureau of Indian Affairs: Administrative Appeals: Discretionary Decisions--Indians: Lands: Trust Acquisitions

When a challenge is raised to a discretionary decision issued by a Bureau of Indian Affairs official under 25 CFR Chapter I, the appellant bears the burden of showing that the official did not properly exercise discretion.

APPEARANCES: Martin E. Seneca Jr., Esq., Reston, Virginia, for appellant; Keith S. Francis, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, for the Acting Area Director.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant John Ross, Jr., seeks review of a June 18, 1991, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to take land in trust for appellant's benefit. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

In 1986, appellant, a Cherokee Indian of 4/4 degree Indian blood, requested BIA to take a 1-acre parcel of land into trust for his benefit. His request was denied by the Area Director in December 1988. Appellant appealed from that decision and, on October 20, 1989, the Board vacated the Area Director's decision and remanded the matter to him, upon finding that the administrative record did not show the Area Director had considered the relevant factors, *i.e.*, those in 25 CFR 151.10, prior to denying appellant's application. Ross v. Acting Muskogee Area Director, 18 IBIA 32 (1989).

Following remand, BIA reconsidered appellant's application. On June 18, 1991, the Area Director again denied it. Appellant's appeal from the second denial was received by the Board on July 11, 1991. Both appellant and the Area Director filed briefs.

Discussion and Conclusions

[1] The standard of review applicable to this appeal was discussed in the Board's earlier decision. 18 IBIA at 33.

Appellant contends that BIA failed to provide him with adequate information concerning the circumstances of other individuals whose land acquisition requests have been approved. He states that he requested the information "for guidance to formulate his own application for land to be taken into trust" and that "[t]he cryptic responses of the BIA to his request provide little if any guidance" (Appellant's Opening Brief at 4). Appellant further contends that the long delays in acting on his request were unfair to him and "have caused the Appellant to conclude that he is the object of discrimination because of his politics." *Id.* at 6. He requests the Board to remand this case with instructions to BIA to (1) furnish him with full information concerning the trust acquisition applications of two individuals; (2) provide him with technical assistance "in developing a business plan for the property" he seeks to take taken into trust, *id.*; and (3) further explain its analysis of some of the factors in 25 CFR 151.10.

Appellant apparently believes that he could have prepared a better application after reviewing the files of other applicants. ^{1/} However, it was appellant's circumstances, not those of others, which were relevant to the inquiry BIA was required to make. As the Board noted in Eades v. Muskogee Area Director, 17 IBIA 198, 202 (1989), "each trust application must be considered on its own merits."

Appellant's arguments also suggest that he believes BIA had an obligation to help him prepare an application guaranteed to be successful. BIA had no such obligation. Even where BIA is required by regulation to provide technical assistance to applicants for BIA programs, it is not

^{1/} As BIA noted, release of personal information concerning other applicants would raise Privacy Act issues. 5 U.S.C. § 552a (1988).

required to be a guarantor of an applicant's success. See Washoe Tribe v. Acting Phoenix Area Director, 19 IBIA 190 (1991). The regulations in 25 CFR Part 151, governing trust acquisitions, do not require BIA to provide technical assistance to applicants.

The record shows that, following the Board's remand, BIA obtained further information from appellant and evaluated appellant's application, including the new information, under the factors in 25 CFR 151.10, as it was required to do by the Board's decision. Appellant has not shown that the Area Director's conclusion is unreasonable in light of BIA's overall analysis of those factors. Appellant's allegation that BIA discriminated against him is just that; he does not substantiate the allegation with any evidence. Delays in processing his application are not evidence that he was discriminated against. Finally, appellant has not shown that manifest error or injustice was committed. 2/

[2] When a BIA decision involves the exercise of discretion, as does the decision on appeal here, the appellant bears the burden of proving that BIA did not properly exercise its discretion. Home Respiratory Services, Inc. v. Muskogee Area Director, 18 IBIA 299, 302 (1990). Appellant has failed to carry that burden here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 18, 1991, decision of the Acting Muskogee Area Director is affirmed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

2/ Appellant impliedly argues that he was the victim of manifest error or injustice. He contends that the Board's review authority over his appeal is governed in part by 43 CFR 4.318, which provides: "[E]xcept as specifically limited in this part or in Title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate."

Given the Board's limited authority to review discretionary decisions of BIA officials, it is questionable whether this portion of 43 CFR 4.318 has much relevance to appeals like the present one.